

EMPLOYMENT APPEALS BOARD DECISION

2014-EAB-1188

*Affirmed
Disqualification*

PROCEDURAL HISTORY: On June 6, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding that claimant quit work without good cause (decision # 163833). Claimant filed a timely request for hearing. On June 25, 2014, ALJ Wipperman conducted a hearing, and on July 9, 2014 issued Hearing Decision 14-UI-21080, affirming the Department's decision. On July 11, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

FINDINGS OF FACT: (1) Bridgeway Recovery Services Inc. employed claimant as an addiction treatment specialist from September 4, 2013 to May 5, 2014. Claimant worked in a residential setting, assisting individuals detoxifying from drug and alcohol abuse.

(2) During the last several weeks of claimant's employment, his coworker talked to him at work about her sex life on several occasions. She also referred to claimant as her "work husband." Exhibit 1. When claimant's coworker discussed her sex life, claimant attempted to redirect the conversation to other topics, or asked his coworker to stop discussing her sex life.

(3) Claimant observed his coworker taking an excessive number of breaks, during which she smoked an e-cigarette in her car. Claimant's understanding of employer's policy was that employees were not permitted to smoke during their breaks.

(4) The employer's policy allowed residents to have visitors from 11:00 a.m. to 5:00 p.m. on Sundays. On Sunday, May 4, 2014, claimant and his coworker had a disagreement about whether a resident was given permission to have a visitor after 5:00 p.m. Claimant became frustrated and tried to take a break from work. Claimant was blind in one eye, making it difficult for him to see people approaching. Claimant's coworker approached claimant unseen, and began yelling that she wanted to "say something." Exhibit 1. Claimant was startled by his coworker's approach and raised his hands. The coworker yelled, "What are you going to do hit me? Well maybe I'll just call the cops and have you

arrested.” Exhibit 1. Claimant concluded that he could not remain at work under the circumstances and departed.

(5) Claimant sent a text message to his supervisor notifying her of the altercation with the coworker, and that claimant had left work. Claimant’s supervisor replied, stating that leaving work was unacceptable, and asking claimant whether he was quitting his job. Claimant attempted to telephone his supervisor but she did not answer. He sent her a text message to determine why, and she replied, explaining that she was not available to talk on the phone, but that she would need to speak to claimant as soon as possible. Claimant replied that he was not quitting, and agreed to meet with his supervisor on Monday, May 5, 2014.

(6) On May 5, 2014, claimant met with his supervisor and submitted a written report of the May 4 incident with his coworker, a written sexual harassment complaint against his coworker for discussing her sex life with claimant and referring to him as her work husband, and a written complaint against her for taking an excessive number of breaks, during which she smoked an e-cigarette in her car. Claimant also had made copies of the incident report and complaints, which he intended to submit to the employer’s human resources department. Claimant knew that he also could discuss the situation with the employer’s chief executive officer (CEO).

(7) Claimant’s supervisor questioned the timing of claimant’s sexual harassment complaint. Claimant became upset that his supervisor would question why he was filing a sexual harassment complaint and notified her that he was quitting, effective immediately.

(8) After claimant quit work, he submitted his incident report and complaints to the employer’s human resources department. A human resources employee told claimant she would investigate his complaints.

CONCLUSIONS AND REASONS: We agree with the Department and the ALJ that claimant quit work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless he proves, by a preponderance of the evidence, that he had good cause for leaving work when he did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). “Good cause” is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (August 3, 2011). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P3d 722 (2010). A claimant who quits work must show that no reasonable and prudent person would have continued to work for his employer for an additional period of time.

Claimant quit work because his supervisor questioned the timing of his sexual harassment complaint against his coworker. However, claimant failed to show that the supervisor would not have investigated his complaint if he had continued working for the employer. If claimant had doubts, he could have followed through on his plan to submit his complaint to the employer’s human resources department, which agreed to investigate claimant’s even after he quit work. Claimant also could have discussed the situation with the employer’s CEO. Although claimant’s coworker’s behavior toward claimant was

inappropriate, it was not so egregious that claimant had no reasonable alternative but to quit work without allowing the employer a reasonable opportunity to address the situation.

Claimant failed to show that no reasonable and prudent person would have continued to work for his employer for an additional period of time. He therefore quit work without good cause, and is disqualified from the receipt of benefits.

DECISION: Hearing Decision 14-UI-21080 is affirmed.

Tony Corcoran and J. S. Cromwell;
Susan Rossiter, not participating.

DATE of Service: August 7, 2014

NOTE: You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310 or visit the website at court.oregon.gov. Once on the website, click on the blue tab for “Materials and Resources.” On the next screen, click on the tab that reads “Appellate Case Info.” On the next screen, select “Appellate Court Forms” from the left panel. On the next page, select the forms and instructions for the type of Petition for Judicial Review that you want to file.